

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

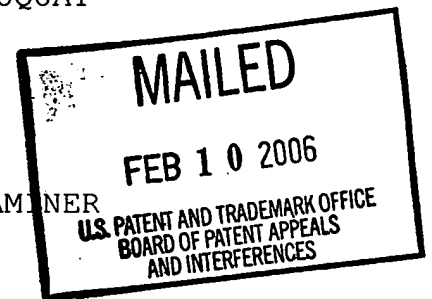
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte GROVER BLACKWELL and JEFFREY FUQUAY

Application No. 09/888,044

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was electronically received at the Board of Patent Appeals and Interferences on January 24, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

**APPEAL BRIEF**

A review of the file indicates that on February 24, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). 37 CFR § 41.37(c) states in-part:

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner.

Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

A review of the application reveals that the following sections are missing:

(1) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and

(2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental brief that is in compliance with 37 CFR § 41.37(c) is required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

Application No. 09/888,044

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

**EXAMINER'S ANSWER**

The Examiner's Answer filed on June 16, 2005, does not comply with the headings as set forth in the new rules under 37 CFR § 41.37(c). See the Manual of Patenting Examining Procedure § 1207.02. Correction is required.

**INFORMATION DISCLOSURE STATEMENT**

Further review of the application file reveals that appellants filed an Information Disclosure Statement (IDS) on February 26, 2002. It is not clear from the record whether the examiner considered the disclosure statement submitted or whether the examiner notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98. Clarification is required.

Accordingly, it is

**ORDERED** that the application is returned to the examiner to:

- 1) hold the appeal brief defective;
- 2) have the appellants submit the missing appendices in a supplemental Appeal Brief in compliance with the new rules set forth in 37 CFR § 41.37(c) or supply a statement in an Examiner's Answer with assumptions made with regard to the missing appendices;

Application No. 09/888,044

3) vacate the Examiner's Answer of June 16, 2005 and submit a revised Examiner's Answer in compliance with the new rules effective September 13, 2004;

4) acknowledge the Information Disclosure Statement received by the Office on February 26, 2002;

5) notify appellants of said written consideration of the disclosure statement, have communication scanned into the record; and

6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES



---

CRAIG R. FEINBERG  
Program and Resource Administrator  
(571) 272-9797

CRF:hh

TIMOTHY A. CASSIDY  
DORITY & MANNING  
ATTORNEYS AT LAW, P.A.  
P.O. BOX 1449  
GREENVILLE, SC 29602